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UNITED STATES COURT OF FEDERAL CLAIMS

In Re)	MM Docket No. 97-122
GERARD A. TURRO)	File Nos. BRFT-970129YC
)	BRFT-970129YD
For Renewal of License)	
for FM Translator Stations)	
W276AQ(FM), Fort Lee, NJ,)	
and W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
Construction Project for FM)	
Radio Station WJUX(FM),)	
Monticello, NY, Should Not)	
Be Revoked)	

Volume XIII

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Friday,
December 12, 1997

The parties met, pursuant to adjournment,
at 9:03 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of Gerald A. Turro:

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ALSO PRESENT:

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Jukebox Radio
687 Orange Street
Oradell, New Jersey 07649
(201) 439-1031

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gerard Turro (Resume)					
By Mr. Aronowitz	--	1941	--	--	--
By Mr. Helmick	--	2024	--	--	--
By Mr. Riley	--	2093	--	--	--
By Mr. Naftalin	--	--	2099	--	--
By Mr. Aronowitz	--	--	--	2113	--

E X H I B I T S

<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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Turro:

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Hearing Began:	9:03 a.m.	Hearing Ended:	3:40 p.m.
Recess Began:	12:40 p.m.	Recess Ended:	1:48 p.m.

1 P R O C E E D I N G S

2 JUDGE STEINBERG Okay, we are back on the record,
3 and welcome, Mr. Turro, I am glad to see you here. And as I
4 said before we went on the record, if you need to take any
5 breaks at anytime, you just let me know and we will stop and
6 we will take a break, because I think your heath is more
7 important --

8 THE WITNESS: I'm fine. Thank you, Your Honor.

9 JUDGE STEINBERG: -- than many other things.

10 Okay, we were in -- I guess, Mr. Aronowitz was
11 doing his cross-examination, so we will continue from there.
12 Whereupon,

13 GERARD A. TURRO
14 having been previously duly sworn, was recalled as a witness
15 herein, and was examined and testified further as follows:

16 CROSS-EXAMINATION (Resumes)

17 BY MR. ARONOWITZ;

18 Q Good morning.

19 A Good morning.

20 Q And when we left off, we were talking about the
21 network affiliation agreement, so I will reference you to
22 Mass Media Bureau Exhibit 8, and just so you know what we're
23 talking about it's at Bates stamp 137 is the network
24 affiliation agreement.

25 A Okay, I need to get a copy of that.

1 JUDGE STEINBERG: Why don't we --

2 THE WITNESS: No, I only have the --

3 MR. ARONOWITZ: Oh, I'm sorry. I thought Mr.

4 Naftalin had put one in front of him.

5 JUDGE STEINBERG: Why doesn't somebody go into the
6 box and put an entire set of Bureau exhibits in front of Mr.
7 Turro.

8 MR. NAFTALIN: I was just leaning over his
9 shoulder yesterday. I think it would be more helpful --

10 JUDGE STEINBERG: Can we go off the record while
11 that's being done.

12 (Discussion off the record.)

13 JUDGE STEINBERG: We're back on the record, and
14 Mr. Turro has in front of him, he has a complete set of
15 Bureau exhibits in front of him, and he is directed to
16 Bureau Exhibit 8, page 137.

17 BY MR. ARONOWITZ;

18 Q The network affiliation agreement is entered into
19 by Bergen County Community Broadcast Foundation.

20 Is Bergen County Community Broadcast Foundation,
21 just so that I can -- if I refer to BCCBF, will you
22 understand that to be --

23 A Yes. Bergen County Community Broadcast
24 Foundation?

25 A Yes.

1 Q Thank you.

2 Are BCCBF and Jukebox Radio two separate entities?

3 A No. BCCBF d/b/a, doing business as Jukebox Radio.

4 Q Okay. And FM 103, Inc?

5 A Approximately around January 1st of 1995, FM

6 103.1, Inc. d/b/a Jukebox Radio, and BCCBF did not.

7 JUDGE STEINBERG: So FM 103, Inc. as of January 1,
8 1995, did business as Jukebox Radio?

9 THE WITNESS: Yes, Your Honor.

10 JUDGE STEINBERG: And BCCBF went away?

11 THE WITNESS: Yes, Your Honor.

12 BY MR. ARONOWITZ;

13 Q Well, it's not entirely accurate, is it? Does
14 BCCBF still exist?

15 A Yes, it does exist, but does d/b/a Jukebox Radio
16 anymore.

17 Q So BCCBF is no longer related to Jukebox Radio?

18 A No.

19 Q Okay. If you would flip this page to Bates stamp
20 140, and that's the amendment to the network affiliation
21 agreement.

22 A Yes.

23 Q And that -- would you agree that BCCBF is the
24 signatory to the -- well, the BCCBF is referred to as the
25 "network" in the amendment?

1 A Yes.

2 Q Okay. And the amendment was dated July 17, '95?

3 A That is correct.

4 Q But you said BCCBF no longer was involved with
5 this at the time?

6 A That is correct.

7 Q So is there any reason why --

8 A These were supposed to have been signed -- these
9 had been sitting on Mr. Weis's desk and my desk since
10 November of 1994.

11 JUDGE STEINBERG: "This" being pages 140 and 141?

12 THE WITNESS: Um-hmm, were sitting on his desk and
13 my desk to be signed, and we had neglected to do it. So
14 when we signed it, we signed it as BCCBF of November 1994,
15 because that's when we intended to sign it, and that's when
16 we had it in our possession.

17 BY MR. ARONOWITZ;

18 Q Are there any documents related to the fact that
19 FM 103 -- that BCCBF was no longer d/b/a Jukebox Radio?

20 In other words, is there any documents that show
21 the shift from BCCBF to FM 103, Inc.?

22 A Could you be -- I don't understand the question.

23 Q Well, were any documents necessary to change the
24 fact that BCCBF was doing business as Jukebox Radio, and
25 then FM 103, Inc. was doing business as Jukebox Radio?

1 There may have been no need to.

2 A I don't believe there was a need to.

3 Q Okay. I was just wondering if there were. Okay.

4 Do you know where Mr. Loginow got a copy of the
5 network affiliation agreement?

6 A Yes, he came some time in the spring of '95, and
7 requested it from Mr. Weis.

8 Q From Mr. Weis?

9 A Yes.

10 Q Could it be Mr. Blabey?

11 A No.

12 Q Was the amendment to the network affiliation
13 agreement in any way related to the visit of the FCC
14 inspector, either at Monticello or Fort Lee?

15 A No.

16 Q Purely coincidental?

17 A This was done back in November and sat on my desk
18 since October or November of '94. So it had nothing
19 whatsoever to do with --

20 Q Well, I'm more concerned about the execution on
21 July 17, 1995. I know it was sitting on your desk.

22 A I believe what happened, and this is just a -- a
23 rough guess of what happened, when Dan Miller was preparing
24 the response to Mr. Goldstein's letter, and he said send me
25 everything you have, Mr. Weis and I sent him everything we

1 had. And he said, "Where is the amendment that I gave you
2 back in '94? Where is that?"

3 And we said, "Oh, geez, I don't know. We'll for
4 it." And we found it, and then we signed it and set it off.

5 Q What do you understand to be the difference
6 between the original network affiliation agreement and the
7 amendment?

8 A I would have to read them both, and I can do that.
9 I'm not an attorney and I didn't do this.

10 Q Just your impression.

11 Absolutely, why don't you read them both?

12 MR. NAFTALIN: Yes, I urge the witness to take as
13 much time as he needs.

14 MR. ARONOWITZ: Absolutely.

15 THE WITNESS: Do you want me to read both?

16 JUDGE STEINBERG: The network affiliation
17 agreement and the amendment.

18 THE WITNESS: Okay, it will take me a couple of
19 minutes.

20 JUDGE STEINBERG: Okay, we can go off the record.

21 (Whereupon, a recess was taken.)

22 JUDGE STEINBERG: Back on the record.

23 Mr. Turro has read both the network affiliation
24 agreement and the amendment.

25 //

1 BY MR. ARONOWITZ;

2 Q And the questions is your understanding of the
3 difference between the two documents?

4 A I believe the amendment basically clarifies what
5 Mr. Weis's responsibilities are as a licensee in relation to
6 the network affiliation agreement.

7 Q Could you clarify -- could you explain how the
8 second -- how the amended agreement clarifies Mr. Weis's
9 responsibilities?

10 A Yeah, in terms of he's responsible for the
11 assessment of the needs of the community of license and
12 service areas, and also -- that's the one that stands out,
13 the first one that stands out in that paragraph, paragraph
14 No. 2.

15 It also gives him the right to reprogramming which
16 he thinks does not pertain to the community, which is not --
17 well, it gives him the right to reprogramming as he sees fit
18 in paragraph number three. And as I said earlier, it
19 basically says he will abide by all FCC regulations and
20 requirements.

21 But it's also important to know that this was done
22 under the call signs WXTM in paragraph number one, and not
23 WJUX.

24 JUDGE STEINBERG: When you say it's important, do
25 you mean in terms of the timing of when the agreement was

1 made between you and Mr. Weis?

2 THE WITNESS: Exactly, Your Honor.

3 BY MR. ARONOWITZ;

4 Q To your knowledge, between October of '94 and let
5 us say October of '95, has MMBI or Mr. Weis ever deleted
6 programming offered on the network?

7 A Deleted programming?

8 Q Or preempted?

9 Well, using the words of the amendment, "delete"
10 or "preemptive".

11 A Not that I recall.

12 Q Okay. To your knowledge, were political ads sold
13 to Jukebox Radio Network between October 1994 and October
14 1995?

15 A Yes.

16 Q Okay. And were political ads sold to, and let us
17 just say Bergen County candidates, Bergen County area
18 candidates?

19 A At least.

20 Q Okay. Were there Sullivan County area candidates?

21 A There may have been.

22 Q Would Sullivan County area candidates have
23 purchased times at network rates?

24 A The network's lowest unit rate?

25 Q The network's?

1 A If they decided on the network, I believe so, yes.

2 Q Okay. If they decided not to go on the network,
3 what rates would they pay?

4 A Whatever rates that were -- WJUX was seeing at
5 locally.

6 Q Okay. So if -- are there any political files
7 associated with WXTM, now WJUX Monticello?

8 A I wouldn't know.

9 Q If the network sold ads, would it be required to
10 furnish materials for WXTM, now WJUX political file?

11 A Could you repeat the question?

12 Q If the network sold political ads on the network,
13 would the network have to send to WXTM or associate material
14 with the WXTM political file?

15 A I don't think so.

16 Q Okay.

17 JUDGE STEINBERG: Do you know if there was a WXTM
18 or WJUX political file?

19 THE WITNESS: I don't know, Your Honor.

20 BY MR. ARONOWITZ;

21 Q Did the network keep a political file of ads that
22 the network sold?

23 A Yes.

24 MR. ARONOWITZ: Now, I'm not sure that this has
25 made it into the box, but I am going to put in front of Mr.

1 Turro Mass Media Bureau Exhibit 39, which I believe is the
2 February 1, 1995, advertising rates for Jukebox Radio.

3 JUDGE STEINBERG: That may be in another binder.

4 MR. ARONOWITZ: Okay. I have a copy of it here.

5 JUDGE STEINBERG: Well, why don't we put -- if you
6 can find another binder, put the other binder.

7 MR. NAFTALIN: This was one that was admitted
8 during the hearing, right?

9 MR. ARONOWITZ: Yes.

10 JUDGE STEINBERG: Oh, then it's not in here.
11 Okay.

12 THE WITNESS: I have it.

13 JUDGE STEINBERG: Okay.

14 MR. ARONOWITZ: Could you put it in front of him?

15 MR. NAFTALIN: Sure.

16 JUDGE STEINBERG: What number please? Thirty-
17 nine?

18 THE WITNESS: Yes, Your Honor.

19 (Pause.)

20 BY MR. ARONOWITZ;

21 Q Mr. Turro, have you looked a Mass Media Bureau
22 Exhibit No. 39?

23 A Yes.

24 Q Okay. If a Sullivan County politician bought an
25 ad locally on Jukebox Radio using Jukebox Radio 99.7 FM,

1 which I imagine would be a local buy as opposed to a network
2 buy?

3 A Is this in February of 1995?

4 Q February of 1995.

5 A I don't think a politician would be buying
6 political advertising in February of 1995.

7 Q Okay. Assume for a moment that a -- well, if ads
8 were sold on the Jukebox Radio Network using these rates,
9 not political ads, just regular advertising bought locally
10 at these rates.

11 JUDGE STEINBERG: Exhibit 95, right?

12 MR. ARONOWITZ: '95 rates, these rates.

13 JUDGE STEINBERG: Excuse me. Exhibit 39 rates.

14 BY MR. ARONOWITZ;

15 Q At the Exhibit 39, the local WJUX rates, if an ad
16 was purchased.

17 A By whom?

18 Q Anybody, any advertiser at this rate -- well --

19 A Yeah?

20 Q Do you have an impression how this would impact
21 the lowest unit rate -- the lowest unit charge on the
22 network?

23 A It wouldn't.

24 Q It wouldn't.

25 If the network sold ads for WXTM that were played

1 on WXTM?

2 A Are we talking political?

3 Q We're talking -- we're talking if a person came in
4 and bought an ad at these local rates.

5 A A person from where?

6 Q Anywhere; a car dealership, a restaurant, a
7 pharmacy, anybody bought a local rate on February -- at
8 these February --

9 A This is not the network rate. If you can give me
10 an example, it would be a lot easier for me to follow.

11 Q Okay.

12 JUDGE STEINBERG: If Mr. Weis or somebody up in
13 Sullivan County had sold ads at the rates shown on MMB
14 Exhibit 39, would the network have broadcast the ads?

15 THE WITNESS: Oh, not, they could have broken away
16 and done it themselves.

17 JUDGE STEINBERG: Was the network obligated to
18 broadcast any ads sold by other than network personnel?

19 THE WITNESS: No.

20 BY MR. ARONOWITZ;

21 Q But the network sold ads, political ads; is that
22 correct? The network sold political ads?

23 A Yes.

24 Q Okay. And presumably those political ads were
25 broadcast over WXTM/WJUX; is that correct?

1 A Through the network, yes.

2 Q Through the network?

3 A Yes.

4 Q But they aired over WJUX?

5 A Yes.

6 Q Okay. Monticello, WJUX Monticello.

7 If someone purchased an ad locally, this is now
8 another concept.

9 JUDGE STEINBERG: In Monticello?

10 BY MR. ARONOWITZ;

11 Q If someone -- exactly, if somebody purchased an ad
12 locally --

13 A Through the network.

14 Q -- in Monticello --

15 A On the network.

16 See, I'm sorry. This is where I'm getting
17 confused, and I apologize.

18 Q I will take my time. We will get this.

19 Forget the network for a moment, we just discussed
20 the network.

21 A Okay.

22 Q If I wanted to purchase an ad locally on WXTM, and
23 I purchased the ad at these February '95 rates, \$15.00 for
24 30 seconds, to your knowledge, would that impact the rate
25 charged by the network for its political ads?

1 A No.

2 MR. RILEY: Objection, Your Honor. I think this
3 is irrelevant. There is no political rate issue in this
4 case. This question goes to whether there was a network
5 compliance requirement and whether the network didn't
6 comply, or it would have speculatively.

7 JUDGE STEINBERG: What's the relevance?

8 MR. NAFTALIN: Your Honor?

9 JUDGE STEINBERG: Do you want to be heard?

10 MR. NAFTALIN: Yes, Your Honor. I didn't want to
11 interrupt Mr. Aronowitz because we are all trying to get
12 through this, but at the end of his questioning I wanted to
13 move to strike because there is no political -- there is no
14 lowest unit rate issue in this case. There is no political
15 advertising issue in this case, and there is no network --
16 there is no network issue in this case which would be
17 relevant to political buys.

18 JUDGE STEINBERG: What is the --

19 MR. ARONOWITZ: The purpose of this line of
20 questioning is to establish that if an ad was sold -- that
21 the difference between network rates and local rates --
22 well, let me try -- that the difference between local rates
23 and network rates are so vast that they would actually be
24 loaded not to see rates locally.

25 JUDGE STEINBERG: Why don't you argue that in your

1 conclusions? We have the facts?

2 MR. ARONOWITZ: Fair enough.

3 JUDGE STEINBERG: We have exhibits that says what
4 the network rates are. We have an exhibit that says what
5 the Monticello rates are. And you can certainly cite to the
6 facts. They are in the record, and you can argue
7 conclusions.

8 But that's not the direction in which the
9 questions are going.

10 MR. ARONOWITZ: Okay.

11 JUDGE STEINBERG: So the objection is sustained.

12 MR. ARONOWITZ: All right.

13 JUDGE STEINBERG: And the answer was already in
14 the record and we'll leave it there.

15 MR. ARONOWITZ: Okay.

16 JUDGE STEINBERG: So your implicit motion to
17 strike is denied.

18 BY MR. ARONOWITZ;

19 Q With respect -- Mr. Turro if you could turn to
20 Mass Media Bureau Exhibit 35, and that would be Bates --
21 well, turn to Exhibit 35.

22 And this would be Bates stamp -- it appears to be
23 699.

24 Do you see it? It's a September 25
25 letter/statement.

1 A I see it.

2 Q Have you ever seen that before?

3 A No.

4 Q Okay. So you know nothing about that?

5 A No.

6 Q Okay. Did you ever suggest that WJUX-FM Liberty
7 curtail -- not accept political ads?

8 A I don't think he's saying that.

9 Q Okay.

10 JUDGE STEINBERG: Turn to page 700.

11 THE WITNESS: Yes, Your Honor.

12 JUDGE STEINBERG: There is a signature at the very
13 bottom there. There is a box checked and accepted.

14 THE WITNESS: Yes.

15 JUDGE STEINBERG: And there is a signature there
16 and the general manager is put next to it.

17 Do you recognize that signature?

18 THE WITNESS: No.

19 JUDGE STEINBERG: Okay.

20 BY MR. ARONOWITZ;

21 Q Mr. Turro, the network affiliation agreements
22 between you and Mr. Weis, I'm not going to ask you about
23 them. I'm going to ask you about them, I'm not going to ask
24 you questions from them.

25 The agreements between you and Mr. Turro, they

1 were run through counsel?

2 A Yes.

3 Q Okay. As well as the letters of inquiry?

4 A Yes.

5 Q Okay. And both you and Mr. Weis used Koteen &
6 Naftalin?

7 A Yes.

8 Q And when you would run these agreements through
9 counsel, would you personally consult with the attorneys?

10 A I believe I did.

11 Q Okay. Do you know whether Mr. Weis personally
12 consulted with attorneys?

13 A I would believe he would.

14 Q Okay. Were there occasions where you would run
15 things through the attorneys and get back to Wes with
16 respect to what they may or may not have said?

17 JUDGE STEINBERG: "They" being the attorneys?

18 MR. ARONOWITZ: The attorneys.

19 THE WITNESS: I don't have any specific
20 recollection.

21 MR. ARONOWITZ: Okay.

22 BY MR. ARONOWITZ;

23 Q But could it happen?

24 MR. RILEY: Well, anything could happen, Your
25 Honor.

1 MR. ARONOWITZ: Okay.

2 JUDGE STEINBERG: Okay, that's sustained.

3 MR. ARONOWITZ: Okay. Fair enough.

4 BY MR. ARONOWITZ;

5 Q Do you know whether -- did you ever -- do you
6 whether Mr. Weis incurred any legal expenses?

7 A Concerning?

8 Q Legal fees, legal expenses.

9 A Obviously.

10 Q Okay. In connection with WXTM and WJUX?

11 A Obviously.

12 Q Okay, and --

13 JUDGE STEINBERG: Just so that the record is
14 clear, I don't think you want to ask it in that form because
15 he's obviously incurred legal expenses in connection with
16 this hearing, and I don't think that's what you want to get
17 at.

18 MR. ARONOWITZ: No. Okay.

19 JUDGE STEINBERG: So try again.

20 MR. ARONOWITZ: Okay.

21 BY MR. ARONOWITZ;

22 Q Did you reimburse Mr. Weis for any legal expenses?

23 A None.

24 Q Are you obligated to repay his legal expenses?

25 A Involving?

1 JUDGE STEINBERG: In connection with what?

2 BY MR. ARONOWITZ;

3 Q In connection with the acquisition of WXTM?

4 A None.

5 Q With regard to the preparation of letter of
6 inquiry?

7 JUDGE STEINBERG: The response to it?

8 BY MR. ARONOWITZ;

9 Q The response to the letter of inquiry?

10 A None.

11 Q With respect to this hearing?

12 A None.

13 Q You said that, to your recollection -- I believe
14 you said, to your recollection, that ads began to be sold or
15 aired on the Jukebox Radio Network around January of 1995;
16 is that correct?

17 A Yes, sir.

18 Q Okay. Before that were there ads?

19 A I don't recall any specific ads, no.

20 Q Were there -- was ad time sold between October '94
21 and January of '95?

22 A Sold or broadcast?

23 Q Sold.

24 A I believe so.

25 Q Okay. And who would sell those ads?

1 A The network.

2 Q The network.

3 A And I'm going to talk about the public affairs
4 programming coming from WVOS and broadcast on the network.

5 When did that first begin to happen?

6 A I don't have a specific date.

7 Q Okay. Do you recall -- without regard to a date,
8 do you recall when -- in your mind, do you recall when that
9 more or less began to happen?

10 Let me ask it this way. Excuse me, i withdraw
11 that question.

12 When the WVOS public affairs programming initially
13 began to be broadcast to WJUX, how were those programs
14 received at the network?

15 A I believe initially they were mailed to the
16 network by Mr. Blabey.

17 Q Were they ever taped over the air --

18 A Yes.

19 Q -- by WVOS?

20 A Yes.

21 Q AM or FM, if you know?

22 A FM.

23 Q And do you know when that happened?

24 A Specifically, no, I do not.

25 Q Okay. Do you know when -- do you know how long